

FILED
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2005 MAR 31 A 11: 56

C.A. No. 05-10489-MEL

U.S. DISTRICT COURT
DISTRICT OF MASS

GLENN S. BATES,
Plaintiff

v.

TOWN OF HARWICH and
HARWICH POLICE
DEPARTMENT
Defendants

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**AUTOMATIC REQUIRED DISCLOSURE PURSUANT TO
FED.R.CIV.P. 26(a) AND LOCAL RULE 26.2**

Now comes the Defendant, the Town of Harwich, pursuant to Fed.R.Civ.P. 26(a) and Rule 26.2 of the Local Rules of the United States District Court for the District of Massachusetts and makes the following required disclosures:

(A) The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information.

The following individuals are likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings. Each of the following is able to be contacted via the Town of Harwich Police Department, 183 Sisson Road, Harwich, MA 02645, (508)430-7541.

Chief William Mason
Officer Christopher Kender
Officer Barry Mitchell

(B) A copy of, or a description by category and location of, all documents, date compilations, and tangible things in the possession, custody, or control of the party that are relevant to the disputed facts alleged with particularity in the pleadings.

The policies and procedures applicable to the Harwich Police are available for viewing and photocopying.

The police report is attached hereto and marked as Exhibit "1"

(C) A computation of any category of damages claimed by the disclosing party, making available;

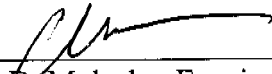
Not applicable.

(D) For inspection and copying as under Rule 34, any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a Judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the Judgment.

The insurer, Legion, was declared insolvent. The applicable entity now handling this claim is the Massachusetts Insurers Insolvency Fund (MIIF).

Respectfully submitted,
Defendant, Town of Harwich
By its Attorneys,

WYNN & WYNN, P.C.

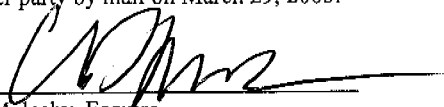


Charles D. Mulcahy, Esquire
BBO#359360
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90 New State Highway
Raynham, MA 02767
(508) 823-4567

Dated: March 29, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail on March 29, 2005.



Charles D. Mulcahy, Esquire

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rpt date: 12/04/01 09:42 reported: FRIDAY 11/30/01 09:45
 ucr: 13P ASSAULT-OFFICER ASSAULTED*
 ibr: 1:602 2:690
 location: 621 RT 28
 follow up by: None needed case status: CLOSED
 officer: rpt status: Complete
 review officer: 504 B MURPHY
 sup review officer:
 comp/vict notify: No
 cir/involve type:

complaint: ATT TO SERVE WARRANT 621 RT 28 SO HARWICH

reporting officer: 7 B MITCHELL assignment: B car: G15
 second officer: 26 C KENDER sup/back-up: 14 D JACEK

*** NAMES ***

type	mast#	name/add	phone	dob	ss#
SUSPECT/O	000141	BATES, GLENN S 261 MAIN ST HARWICHPORT MA 02646		03/04/61	011-54-9162
		obtn: THAW018405901			
VICTIM	001999	MITCHELL, BARRY M 183 SISSON RD HARWICH MA 02645		07/17/56	
VICTIM	003101	KENDER, CHRISTOPHER J 183 SISSON RD RD HARWICH MA 02645	396-1932	08/19/65	033-56-2308

*** NARRATIVE ***

THE FOLLOWING SUBMITTED BY LT. MITCHELL.
 ON 11/30/01 AT APPROX. 10AM SGT. KENDER AND I RESPONDED TO
 621 MAIN ST. HARWICHPORT TO SERVE A WARRANT OF APPREHENSION ON
 GLEN BATES. THE WARRANT DESCRIBED BATES' RESIDENCE AS A SECOND
 FLOOR APARTMENT. WE WENT TO THE REAR OF THE HOUSE AND OBSERVED
 AN INTERIOR STAIRWAY LEADING UP. THERE WAS A SCREEN DOOR THAT
 WAS THE ENTRY TO THIS STAIRWAY. I KNOCKED ON THE DOOR AND YELLED
 HARWICH POLICE. THERE WAS NO RESPONSE, SO WE STARTED UP THE STAIRS.
 I WAS IN FRONT AND SGT. KENDER WAS SEVERAL STEPS BEHIND ME. WHEN
 I NEARED THE TOP I SAW THAT THERE WAS ANOTHER INTERIOR DOOR
 WHICH WAS CLOSED. I SAW A PAIR OF SNEAKER CLAD FEET THROUGH THE
 CRACK UNDER THE DOOR. THESE FEET WERE MOVING FROM MY LEFT TOWARD
 MY RIGHT. I HEARD THE PERSON STOP JUST TO THE RIGHT OF THE DOOR.
 I TURNED TO SGT. KENDER AND SAID, "HE'S IN THERE, BE CAREFUL". I THEN
 CALLED OUT, "GLEN, IT'S THE POLICE, WE NEED TO TALK TO YOU". BATES
 REPLIED, "COME ON IN". I TRIED THE DOOR KNOB AND FOUND THAT IT WAS
 UNLOCKED. I PUSHED THE DOOR OPEN AND WAITED A SECOND. WHILE
 LOOKING TO MY RIGHT, I STUCK MY HEAD THROUGH THE DOOR AND QUICKLY
 PULLED IT BACK. AS I DID THIS I SAW THAT BATES WAS STANDING
 BESIDE THE DOOR WITH A HOCKEY STICK RAISED OVER HIS HEAD. HE

EXHIBIT

"A"

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SLAMMED THE STICK DOWN TOWARD MY HEAD, BUT I WAS ALREADY PULLING IT BACK AND JUST AVOIDED BEING STRUCK. I QUICKLY BACKED UP AND BUMPED INTO SGT. KENDER. I TURNED AND ATTEMPTED TO PUSH HIM BACK OUT OF THE WAY. AS I DID THIS, BATES STRUCK ME IN THE BACK WITH THE HOCKEY STICK. THIS CAUSED ME TO TURN TO MY RIGHT AND SLAM MY BACK AGAINST THE WALL. I LOST MY FOOTING AND BEGAN TO FALL BUT WAS ABLE TO KEEP FROM GOING DOWN BY PRESSING AGAINST THE WALL AS I STAGGERED DOWN. I STILL HAD A GRIP ON SGT. KENDER AND CONTINUED TO TRY AND PULL HIM BACK AS WELL. BATES CONTINUED TO SWING THE STICK AND FINALLY DID SUCCEED IN STRIKING SGT. KENDER IN THE HEAD. AT THAT POINT THE SGT. WENT DOWN TO ONE KNEE AND I LOST MY GRIP ON HIM. I STAGGERED DOWN ANOTHER COUPLE OF STEPS BEFORE REGAINING MY BALANCE. AS I GOT MY BALANCE I DREW MY PISTOL AND TURNED BACK TOWARD BATES. I SAW THAT SGT. KENDER WAS STILL DOWN ON HIS KNEE AND BATES WAS COMING TOWARD HIM WITH THE STICK RAISED. THE SGT. WAS YELLING AT BATES TO STOP, BUT BATES CONTINUED TOWARD HIM. SGT. KENDER THEN FIRED 2 ROUNDS. BATES STAYED UPRIGHT FOR A SECOND AND THEN FELL FORWARD. HE THEN CONTINUED TOWARD US BY PULLING HIMSELF FORWARD WITH HIS HANDS. WE BACKED UP AND COVERED BATES UNTIL HE LAY STILL. I THEN CALLED FOR AN AMBULANCE.

SGT. JACEK APPEARED ALMOST IMMEDIATELY, AND HE AND I MOVED BATES OUTSIDE WHERE THERE WAS ROOM TO PERFORM FIRST AID. CAPT. WELCH AND LT. GOMES ARRIVED ON SCENE AND TOOK COMMAND OF THE INCIDENT. HARWICH RESCUE RESPONDED AND TRANSPORTED BATES TO THE HOSPITAL. SGT. KENDER HAD A HEAD INJURY AND I HAD A BACK INJURY, SO ADDITIONAL RESCUE PERSONNEL WERE CALLED. BOTH THE SGT. AND I WERE THEN TRANSPORTED TO CCH BY RESCUE. WE WERE BOTH TREATED AT THE HOSPITAL AND NEITHER OF US HAD ANY FURTHER CONTACT WITH BATES.

THIS IS THE REPORT OF SGT. CHRISTOPHER KENDER TRANSCRIBED BY RECORDS CLERK BEVERLY MURPHY AS GIVEN TO CHIEF WILLIAM A. MASON ON DECEMBER 7, 2001 AT 10:00 A.M.

THIS REPORT IS SUBMITTED BY SGT. CHRISTOPHER J. KENDER OF THE HARWICH POLICE DEPARTMENT IN REGARDS TO THE SERVICE OF A WARRANT OF APPREHENSION FOR GLENN BATES WHO RESIDES AT 621 MAIN STREET (RTE. 28) HARWICH PORT, MA.

WHILE ON UNIFORM PATROL IN MARKED UNIT G-1, I WAS ADVISED BY DISPATCHER/SPECIAL OFFICER WALTER ENNES TO CALL OR STOP BY THE HARWICH POLICE DEPARTMENT. AFTER ASSISTING LT. BARRY MITCHELL ON AN ALARM CALL ON FIDDLER'S LANDING, I RESPONDED TO THE STATION. WHILE AT THE STATION, OFFICER ENNES HANDED ME SOME PAPERWORK. IT WAS A WARRANT OF APPREHENSION FOR MR. GLENN BATES. I LOOKED OVER THE WARRANT. MR. BATES' MOTHER HAD APPLIED FOR THE WARRANT THIS MORNING (NOV. 30, 2001) AT THE ORLEANS DISTRICT COURT. ON THE WARRANT IT GAVE MR. BATES' CURRENT ADDRESS AS 621 MAIN ST. (RTE. 28) HARWICH PORT, REAR UPSTAIRS APARTMENT. ALSO ON THE WARRANT WAS A PHYSICAL DESCRIPTION OF MR. BATES. MR. BATES DID NOT HAVE A MOTOR VEHICLE (CAR) JUST A RED DIRT BIKE TYPE MOTORCYCLE. MRS.

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HUGHES (BATES' MOTHER) ALSO PUT ON THE WARRANT IN PARENTHESES THAT MR. BATES WAS (VERY STRONG). I AM VERY FAMILIAR WITH MR. BATES OVER MY CAREER WITH THE HARWICH POLICE DEPARTMENT. I READ THROUGH THE REST OF THE WARRANT AND RETURNED BACK TO MY VEHICLE. WHILE IN MY VEHICLE I PROCEEDED TO RADIO LT. MITCHELL FOR A MEET AT SCHOOL HOUSE PARKING LOT IN HARWICH PORT.

I MET WITH LT. MITCHELL AND HE TOOK THE WARRANT OF APPREHENSION. OFFICER ENNES ALSO ADVISED SGT. JACEK AND CAPT. WELCH OVER THE RADIO THAT LT. MITCHELL AND I WERE GOING TO ATTEMPT TO SERVE THE WARRANT ON MR. BATES. LT. MITCHELL AND I RESPONDED TO THE ADDRESS ON THE WARRANT AROUND 09:45 HRS. WE PARKED OUR VEHICLES UP THE STREET FROM THE RESIDENCE AND WALKED TO THE ADDRESS. WE WALKED AROUND THE PROPERTY AND WE LOCATED A GLASS STORM DOOR AND A NARROW STAIRCASE LEADING TO THE UPSTAIRS APARTMENT. WHILE WALKING AROUND THE OUTSIDE OF THE PROPERTY I NOTICED AN ODOR OF NATURAL GAS. LT MITCHELL KNOCKED ON THE STORM DOOR AND ANNOUNCED OUR PRESENCE BUT THERE WAS NO RESPONSE FROM INSIDE.

LT. MITCHELL ENTERED THE TRESHOLD OF THE DOORWAY AND BEGAN ASCENDING THE NARROW STAIRCASE. HALF WAY UP LT. MITCHELL STOPPED. WE COULD HEAR SOMEONE RUNNING AROUND IN THE APARTMENT UPSTAIRS. LT. MITCHELL CALLED OUT MR. BATES' NAME (GLENN) AND ASKED IF HE COULD COME TO THE DOOR BECAUSE WE NEEDED TO SPEAK WITH HIM. LT. MITCHELL ASCENDED A FEW MORE STEPS ALMOST REACHING THE DOORWAY. I ALSO TOOK A FEW STEPS UP BEHIND LT. MITCHELL. LT. MITCHELL CALLED TO MR. BATES AGAIN. FROM INSIDE MR. BATES SAID COME IN. LT. MITCHELL SLOWLY OPENED THE DOOR, WHICH WAS UNLOCKED. THE DOOR SWUNG OPEN BUT WE DID NOT ENTER THE APARTMENT. MR. BATES BEGAN SCREAMING AND HE ENTERED THE THRESHOLD OF THE APARTMENT DOOR SWINGING A LARGE STICK. MR. BATES SWUNG THE STICK AND HIT LT. MITCHELL IN THE BACK. LT. MITCHELL TRIED TO BACK DOWN THE NARROW STAIRCASE. LT. MITCHELL BACKED INTO ME WHILE MR. BATES WAS STILL SWINGING THE STICK AT EACH OF US. I RECEIVED A BLOW TO THE BACK OF THE HEAD WITH THE STICK, WHICH DROPPED ME TO ONE KNEE. MR. BATES STARTED DESCENDING THE STAIRS FROM A POSITION ABOVE THE LT. AND I WITH THE STICK.

WHEN MR. BATES BEGAN DESCENDING THE STAIRCASE FROM ABOVE US WITH THE STICK I FEARED FOR MY LIFE AND THAT OF LT. MITCHELL. DUE TO THE NARROWNESS OF THE STAIRCASE AND THE CLOSE PROXIMITY (2-3 FEET) OF MR. BATES COMING DOWN ON TOP OF THE LT. AND I SWINGING AND CHOPPING AT US WITH THE LARGE STICK. I PROCEEDED TO DRAW MY SERVICE PISTOL FROM MY SECURITY HOLSTER (RIGHT HANDED). AGAIN, DUE TO THE SIZE OF THE STAIRCASE AND HOW CLOSE MR. BATES WAS TO THE LT. AND I THE USE OF MY OC-PEPPER SPRAY OR ASP-STRAIGHT BATON WOULD NOT HAVE BEEN EFFECTIVE. I VERBALLY ORDERED MR. BATES TO STOP BUT HE CONTINUED FORWARD AT ME WITH THE STICK. I PROCEEDED TO FIRE A ROUND FROM MY SERVICE PISTOL AT MR. BATES' CENTER MASS IN AN ATTEMPT TO STOP HIM AS HE DESCENDED THE STAIRS. AFTER FIRING THE FIRST ROUND I DID NOT KNOW IF I HIT MR. BATES WHO WAS STILL

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COMING FORWARD AT ME. MR. BATES WAS NOW INCHES AWAY FROM ME STILL HOLDING THE STICK. I PROCEEDED TO FIRE ANOTHER ROUND AT THE MASS OF MR. BATES TO STOP HIM. AFTER FIRING THE SECOND ROUND MR. BATES FELL ONTO THE STAIRS. MR. BATES, LT. MITCHELL AND I ALL LANDED AT THE BASE OF THE STAIRCASE. MR. BATES NO LONGER HAD THE STICK (STREET HOCKEY STICK). THE STICK WAS LYING NEXT TO HIM AT THE BASE OF THE STAIRS.

WHILE AT THE BASE OF THE STAIRS LT. MITCHELL USED MY PARROT MICROPHONE ON MY RADIO TO REPORT SHOTS WERE FIRED AND WE NEEDED AN AMBULANCE AT OUR LOCATION. SGT. JACEK ARRIVED JUST AS WE REQUESTED AN AMBULANCE. SGT. JACEK AND LT. MITCHELL TOOK MR. BATES FROM THE BASE OF THE STAIRS AND PLACED HIM OUTSIDE THE DOORWAY ON A FLAT SURFACE IN THE YARD. MR. BATES WAS CONSCIOUS AND BREATHING, HE WAS TALKING WITH SGT. JACEK. I MADE MY WAY TO MY VEHICLE (G-1) AND RETRIEVED THE FIRST-AID KIT FROM THE TRUNK AND GAVE IT TO SGT. JACEK. SGT. JACEK WAS MAINTAINING AN OPEN AIRWAY FOR MR. BATES AND WAS ACCESSING WHERE MR. BATES WAS STRUCK. CAPT. WELCH AND LT. GOMES ARRIVED AT THE SCENE. CAPT. WELCH SPOKE WITH LT. MITCHELL AND I WHILE LT. GOMES DIRECTED IN THE HARWICH RESCUE. CAPT. WELCH ASKED IF WE WERE INJURED, WHILE THE HARWICH RESCUE TREATED MR. BATES. LT. MITCHELL ADVISED CAPT. WELCH THAT HIS BACK WAS SORE. LT. MITCHELL HAD A LARGE RED WELT IN THE MIDDLE OF HIS BACK. I ADVISED CAPT. WELCH THAT I WAS HIT IN THE BACK OF THE HEAD. I WAS DIZZY AND MY EARS WERE RINGING. WHEN THE CAPT. OBSERVED MY HEAD HE NOTICED I HAD A WELT ON THE BACK OF MY HEAD AND REDNESS AT THE BASE OF MY NECK.

CAPT. WELCH HAD LT. MITCHELL AND I TAKE A SEAT AT A PICNIC TABLE IN THE YARD. DEPUTY FIRE CHIEF REMILLARD LOOKED AT MY HEAD AND HE RETRIEVED SOME ICE PACKS FROM THE AMBULANCE. DEPUTY REMILLARD CALLED FOR ANOTHER AMBULANCE TO EXAMINE LT. MITCHELL AND I. FIRE CHIEF PETERSON WAS ON LOCATION AND HE ALSO DETECTED A STRONG ODOR OF NATURAL GAS SURROUNDING THE RESIDENCE. HE REQUESTED KEYSAN (NATURAL GAS COMPANY) TO THE SCENE TO SHUT OFF THE GAS TO THE RESIDENCE. FIREFIGHTER SPENCER AND PARAMEDIC THORNTON EXAMINED LT. MITCHELL AND I. THEY ADVISED US THAT WE BOTH NEEDED TO BE EXAMINED AT CAPE COD HOSPITAL. I WAS HAVING SERIOUS HEADACHES, DIZZINESS, AND PAIN IN MY NECK. CAPT. WELCH SECURED MY DUTY BELT, VEST, JACKET AND UNIFORM SHIRT BEFORE I WAS TRANSPORTED TO THE HOSPITAL. WHILE AT THE HOSPITAL THEY TOOK X-RAYS OF MY NECK AND A CAT SCAN OF MY HEAD. THE HOSPITAL STAFF ADVISED ME THAT THE BLOW I TOOK TO THE HEAD GAVE ME A CONCUSSION. I HAD TO STAY AT THE HOSPITAL FOR A COUPLE OF HOURS FOR OBSERVATION BEFORE BEING RELEASED AROUND 15:00 HRS. THAT AFTERNOON. I WAS GIVEN SOME PRESCRIPTIONS FOR PAIN MEDICATION AND THEY ADVISED ME THAT I NEEDED A FEW DAYS REST.

THIS IS A SUPPLEMENTAL REPORT BY SGT DAVID JACEK. ON NOVEMBER 30, 2001 AT ABOUT 1000 HRS., RESPONDED TO 621 MAIN ST HARWICHPORT, TO BACK UP LT. MITCHELL AND SGT KENDER. THEY WERE SERVING A WARRANT OF APPREHENSION ON GLEN BATES.

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UPON ARRIVAL, PARKED ON SNOW INN RD, AND BEGAN WALKING TOWARD THE HOUSE. HEARD WHAT APEARED TO BE TWO GUNSHOTS. SECONDS LATER, HEARD LT MITCHELL OVER THE RADIO CALL OUT, "SHOTS FIRED, WE NEED AN AMBULANCE."

THIS SERGEANT RAN TO THE REAR OF 621 MAIN ST. LT. MITCHELL WAS JUST EXITING THE REAR DOOR. HE ADVISED THAT GLEN BATES HAD ATTACKED THEM WITH A HOCKEY STICK, AND THAT SGT KENDER HAD SHOT BATES. GLEN BATES WAS ON THE FLOOR AT THE BOTTOM OF THE STAIRS BEHIND THE DOOR. THE LANDING WAS VERY NARROW, ONLY ABOUT THREE FEET WIDE. GLEN WAS ASHEN IN COLOR AND DID NOT APPEAR TO BE BREATHING. ALSO HAD DIFFICULTY LOCATING A PULSE. DUE TO THE LACK OF ROOM, IT WAS IMPOSSIBLE TO RENDER FIRST AID TO GLEN WHERE HE WAS. ADVISED LT MITCHELL OF THIS. BOTH OF US MOVED GLEN OUTSIDE THE LANDING AND ONTO THE GROUND. AFTER MOVING HIM OUTSIDE, HE BEGAN BREATHING. HE WAS ALSO MOVING HIS ARMS AND LIFTING HIS HEAD. HE WAS MOANING, GROANING, AND OCCASSIONALLY TALKING. LOCATED THE TWO GUNSHOT WOUNDS, ONE IN THE UPPER LEFT BACK, UNDER THE SHOULDER, AND THE OTHER IN THE MIDDLE OF THE BACK, NEAR THE BELT LINE. NEITHER WOUND WAS BLEEDING. THE WOUND IN THE LOWER BACK BLED A LITTLE ONTO THE CLOTHES, BUT WAS NO LONGER BLEEDING AT ALL. MONITORED GLEN UNTIL RESCUE ARRIVED. .

PARAMEDICS JOHN AYER AND JUSTYNE WALORZ ARRIVED ON LOCATION. ASSISTED THEM IN LOADING GLEN ONTO A BACKBOARD AND THEN ONTO THE STRETCHER. HE WAS TRANSPORTED TO CAPE COD HOSPITAL BY THE RESCUE. SINCE GLEN WAS UNDER ARREST, OFFICER CAMPBELL ACCOMPANIED HIM TO THE HOSPITAL. .

CHECKED LT MITCHELL AND SGT KENDER FOR THEIR INJURIES. LT MITCHELL HAD A LARGE RED AREA IN THE MIDDLE OF HIS BACK WITH A SWELLED AREA IN THE CENTER OF THE RED. SGT KENDER HAD A LARGE RED AREA ON THE TOP OF HIS HEAD. THIS AREA WAS ALSO SWOLLEN. SGT KENDER WAS GIVEN TWO ICE PACKS TO HOLD ON HIS HEAD. BOTH OFFICERS WERE TRANSPORTED TO CAPE COD HOSPITAL BY THE RESCUE. .
COPY OF THIS REPORT FAXED TO DA'S OFFICE 362-8221 4/29/03

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I recommend this case be forwarded to:

() CHIEF () ADMIN/PATROL LIEUTENANT
() DETECTIVES () COURT PROSECUTOR

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I recommend this case be declared:

Unfounded () Not Cleared () Court Action () Cleared by Arrest ()
Active () Complete () Domestic Violence ()

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